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SENSITIVE

STATE PASS TO USTR FOR C. HAMILTON

E.O. 12598: N/A

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SUBJECT: NIGERIA AGOA SUBMISSION AND RECOMMENDATION

1. (U) Country: Nigeria  
Current AGOA Status: Eligible

2. (U) Country Background Summary: Estimated population of 140 million. 2004 GNI was \$55.9 billion; 2004 GNI per capita was \$390. (World Bank 8/2005 Data) Nigeria completed civilian-run national and state elections in 2003 that were marred by irregularities and fraud and continued to struggle to consolidate democracy. The Government continues to make slow progress toward developing an open economy, minimizing government interference, and promoting free market principles.

Comments on Eligibility Requirements Market-based Economy:

3. (SBU) Major Strengths Identified: Government committed to transitioning from state directed economy to one driven by market forces. Economy expanding about 6% due to improved macroeconomic environment. Has a modified "Dutch Auction" mechanism to narrow spread between official and parallel exchange rates. Plans to introduce daily wholesale Dutch auction in 2006. Nigeria has agreed in principle to a comprehensive debt relief package with Paris Club creditors including the U.S. Final details and approval are pending. The management of the Bureau of Public Enterprises was replaced to improve the pace of privatization. The Power Bill was passed, setting the stage to unbundle the Nigeria Electric Power Authority and enable private investment in generation and distribution. Port concessions are moving forward, with an international company awarded the concession to manage the country's largest port--Apapa Port in Lagos. Nigerian Communications Commission (NCC) announced in February 2005 that a unified licensing regime would be introduced in February 2006 to further deregulation and spur competition. NITEL privatization underway. WTO member. Civil Service reform is progressing with the monetization of in-kind benefits implemented. Launched National Economic Empowerment & Development Strategy (NEEDS), a medium-term economic reform program (2003-2007) focused on privatization, good governance, macroeconomic stability, anti-corruption, and public service reforms. Saving excess monies from crude oil sales above \$27 benchmark price in a special reserve account, rather than using it to fuel fiscal expansion. Government budget process taking its rightful position as an economic policy and management tool. Budget deficit has been kept in check. All three tiers of government adhering to fiscal discipline with a consolidated surplus of 10% in 2004. New Chart of Accounts introduced in 2005. Central Bank of Nigeria's directive that banks recapitalize from the Naira 2 billion to Naira 25 billion by December 31, 2005, progressing well. Pension and insurance reform moving forward.

4. (SBU) Major Issues/Problems Identified: Huge and inefficient public sector dominates and inhibits faster development of formal sector. Much of nation's wealth concentrated in hands of tiny military, political, and commercial elite through corruption and non-transparent government contracting practices. Banking system poorly performing intermediation, impeding small and medium investors. Regulatory and tax regimes arbitrarily enforced. Regulatory bodies weak and ineffective. Oil and gas receipts account for 80% of government revenues and over 95% of exports. Fuel subsidies are not budgeted and nontransparent; NNPC directly accesses national Treasury; potential for corruption and abuse are enormous. Nigeria has not adopted IMF Stand-By Agreement. Economic data and statistics are of unreliable quality and availability. Regulatory bodies are weak and ineffective. Fuel prices continue to be regulated and subsidized. Inadequate and unreliable infrastructure is major barrier to private sector activity. Nigeria faces growing pressure for looser fiscal and monetary policy. Intellectual Property Rights Commission not established as announced. 1978 Land Use Act mandates state ownership of land; private use of land is restricted to 99-year lease, and subject to government confiscation without a Certificate of Occupancy or Governor's consent. Conveyance of land requires high level government approval, promoting corruption and inhibiting property transactions.

15. (SBU) Major Strengths Identified:

Elections held in 2003 for some local governments, state governors and assemblies, and national legislators, and the President. Elected civilian government in its sixth year. Thirty political parties participated in 2003 elections. Progress recognizing political pluralism, and establishing right to fair trial and equal protection under law, rights guaranteed constitutionally. Nigerian Supreme Court made landmark decisions in early 2002 affirming its role as arbiter of the national constitution. Signed transparency and anti-corruption agreement with the United States and other G-8 members at the Sea Island Summit in 2004. Established programs to combat corruption, many of which receive support from the United States and other donors. The Economic and Financial Crimes Commission (EFCC) has seized \$670 million in assets from corruption cases, arresting several high level officials. The Inspector-General of Police and the Minister of Education were fired for corruption. The Senate President was removed from his post for corruption, though he retained his Senate seat. EFCC is investigating corruption charges against state governors and their associates. Top levels at the Customs Administration were replaced on corruption charges.

16. (SBU) Major Issues/Problems Identified:

Communal violence continues, especially the latter in the oil-rich Niger Delta. Elections of 2003 were marred by serious irregularities, fraud, with violence in some areas. The Independent National Electoral Commission (INEC), the body charged with conduct of elections, is not independent, and argued in court throughout 2004-2005 that it need not be independent. Judges are subject to both bribery and intimidation, if not outright threats. Corruption remains an overwhelming problem. To date there have been no convictions of any high-level official for corruption. Use of militias and vigilante groups by politicians continues. Government remains unable to guarantee citizens right to speedy, fair trial. Government has failed to implement some key court decisions. The judicial system is weak and in need of serious reform. Excessive violence, lethal force, and corruption at police and military roadblocks and checkpoints continue, despite the Acting Inspector-General of Police's announcement in January 2005 that police roadblocks would be eliminated. Prison and detention conditions remain harsh and life threatening. Some prisons held 200 to 300 percent more persons than their designed capacity. Failure to curb oil bunkering fuels corruption, arms trafficking and political instability.

Elimination of barriers to U.S. Trade and Investment

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17. (SBU) Major Strengths Identified:

TIFA with U.S. provides a mechanism to address trade and investment issues. Nigeria is a top destination of U.S. investment in Africa, due to investment in the petroleum sector. U.S. exports to Nigeria rose by more than 50% in 2004 over 2003. In the first seven months of 2005 U.S. exports increased 18% over the same period in 2004. Tax administration reform is progressing.

18. (SBU) Major Problems/Issues Identified:

Multiple bans in violation of WTO rules in the last three years have affected imports of many agricultural products. Arbitrary ban encourage smuggling. Import bans accompanied by sole source importation rights to favorite partners impede competition. Comprehensive trade reform by adoption of the ECOWAS Common External Tariff was postponed from its promised July 1, 2005 implementation date. Trade and investment policies are frequently changed, suspended, cancelled or implemented inconsistently. Some U.S. firms with contracts with the government face consistent problems receiving timely payments. No progress has been made as the result of TIFA negotiations. Negotiators report that the President ultimately makes decisions on trade and investment issues. Nigerian government procurement lacks transparency. Nigeria's Cabotage Law is a barrier to trade and investment and has compelled U.S. firms to exit Nigeria. In the oil and gas sector Nigeria is imposing or threatening to impose requirements to invest in power production or refining, in an attempt to force investment in unprofitable sectors. Availability of fuel import subsidies limited to Nigerian National Petroleum Corporation (NNPC), forcing out potential competitors in the downstream fuel market. Local content requirements impose additional costs in investments. Across several sector, the government employs predatory negotiating tactics, including threats to access to inputs, customs and other legal approval process, and transferring contracts to entities that cannot uphold contract terms. Foreign Exchange repatriation regulations enforced arbitrarily. Access to imported inputs under the Manufacturers-in-Bond

Scheme suspended available only by Presidential directive, and highly politicized.

#### Poverty Reduction

19. (SBU) Major Strengths Identified: National Planning Commission finalized the National Economic Empowerment and Development Strategy (NEEDS), Nigeria's homegrown Poverty Reduction Strategy. The National Poverty Eradication Program (NAPEP) being implemented at the local government level, focusing on micro-enterprise development and other programs.

10. (SBU) Major Issues/Problems Identified: Government poverty strategy does not clearly link goals and methods; National Assembly has refused to fund poverty alleviation; serious concerns remain about fiscal transparency; human capacity for project implementation weak. Government is implementing the poverty program slowly.  
Workers' Rights/Child Labor/Human Rights

11. (SBU) Major Strengths Identified: Improvements in some areas of human rights, including the arrest of several traffickers of persons; yet serious problems remain, such as continued lack of accountability for past abuses. The Constitution provides for freedom of religion, and the Government generally respects that right, although some state governments place restrictions on freedom of religion. Nigerian Constitution protects the right of association and the right to organize and bargain collectively, but statutory restrictions remain in place. In June 2005, a court struck down legislation that required a police permit for all public rallies and processions. Nigerian law prohibits forced or bonded labor, forbids the employment of children younger than age 15 in commerce and industry, and restricts other child labor to home-based agricultural or domestic work for a maximum of eight hours a day. All known political prisoners and most known political detainees have been released. Security forces still commit human rights violations, but these no longer appear to be systematic or officially sanctioned. Workers, except members of armed forces, police, and employees designated essential by Government, may join trade unions and strike, but reasons for striking are limited. In 2002, President Obasanjo signed the instruments of ratification for ILO convention 182, Worst Forms of Child Labor; Convention 138, Minimum age for Employment; and Convention 111, Equality of Occupation. Ratified ILO convention 87 on freedom of association and convention 98 on the right to organize and collective bargaining. Also ratified ILO conventions on forced labor. Worker rights and child labor laws have been enacted, but to date Child Rights Act has only been ratified by six states. New legislation was passed in 2003 outlawing human trafficking, and the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) was established.

12. (SBU) Major Issues/Problems Identified: Most major social indicators remain weak; for example, under-5 child mortality is at an alarmingly high level of 20 percent. Domestic violence and discrimination against women remained widespread. Outbreaks of violence and community unrest in the oil-producing Niger Delta caused occasional disruption in Nigeria's oil production. Army troops killed about 200 unarmed civilians in October 2001 in Benue state, but to date there has been no accountability. Police and security forces continue to use excessive and sometimes lethal force to beat protesters, suspects, detainees and convicts, and to use arbitrary arrest and detention; prolonged pretrial detention remains a problem. No laws prohibit retribution against strikers. The Trade Unions Act does not ensure workers right to form and join unions of their own choosing, deems all registered trade unions to be affiliated with the central labor organization, and violates ILO convention on right of association. Trade Unions (Amendment) Decree of 1996 makes check-off payment of dues conditional on a "no-strike" clause during the lifetime of the collective agreement. The Trade Unions Amendment Act of March 2005 criminalizes meetings between labor and civil society organizations and bans nation-wide strikes on any issue but service conditions. The Act ended the Nigerian Labor Congress' status as the sole, central labor organization, and the Trade Union Congress y received official federal government recognition. While decentralization may seem better for the right to form and join unions, it has weakened the labor movement in Nigeria. Labor rights have been limited by targeted layoffs and terminations of labor activists, by intimidation to press workers to leave unions, by the increasing use of casual labor, especially in the oil industry. Payment of salaries to government workers often several months in arrears; workers who protest or strike over arrearages face dismissals, threats of layoffs, and pressure to agree to lowered minimum wages. Government places limits on freedom of assembly and association, citing

security concerns. Trafficking in persons for purposes of prostitution and forced labor is a problem, allegedly with collusion of government officials. Some persons including children subjected to forced labor, and child labor rising. Government relations with the NLC remain severely strained since 2003 because of the President's determination to deregulate fuel prices, and the trade union's use of general strikes to protest price hikes.

#### International Terrorism/U.S. National Security

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13. (SBU) Major Strengths Identified: President Obasanjo personally acting to build West African support for anti-terrorism coalition activities. Central Bank of Nigeria pledged to identify and freeze terrorist assets in Nigerian banks.

14. (SBU) Major Issues/Problems Identified: None.

#### Mission Recommendation

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15. (SBU) The Mission recommends that Nigeria be found eligible to participate in AGOA for 2006.

16. (SBU) Although slow, Nigeria has continued to make progress on economic reform and in combating corruption in 2004 and 2005. Macro-economic stability contributed to 7.4% growth in the non-oil sector in 2004, while prudent management of windfall oil revenues has been maintained in the face of increasing pressure. Continued progress also has been made increasing transparency of revenue and in budget implementation. After a disappointing year, a new team appears to be reinvigorating the privatization process. These achievements are not trivial.

17. (SBU) We make this recommendation despite the fact that barriers to trade and investment, highlighted in last year's letter from Dr. Rice to President Obasanjo are growing in Nigeria. Though some individual issues have been resolved, overall the trend has worsened. The promised move to the ECOWAS CET, has been postponed, and although the Government of Nigeria is now stating that it will be implemented in October 2005, the Government does not appear to be preparing for implementation actively. Key outstanding problems include the failure of the GON to renew contractually mandated tax exemptions for AES, and proposals to force oil producers to refine domestically and/or invest in refineries. Despite these real and serious problems both U.S. exports and investment levels are growing.

18. (SBU) Maintaining the status quo by approving Nigerian eligibility for AGOA would not have a significant impact. Finding Nigeria ineligible, however, would have significant negative symbolism, and would be seen as a real blow to the President and the economic team. It would certainly be used as ammunition by the critics of the economic team. Nigeria does not take much advantage of AGOA, and non-oil exports to the U.S. have been falling. Thus it does not provide significant practical leverage on the Government of Nigeria to push action on the issues which concern us. Balancing the limited efficacy of an ineligibility finding in pressuring the GON on trade and investment issues against the real harm of undermining the position of the economic reform leaders, we support finding Nigeria eligible as more productive in forwarding U.S. foreign policy goals in Nigeria.

CAMPBELL